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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Public (Elections) III DEPARTMENT 1953

G.O. No. / B.P. No.	1407	Press / Mis.
Dated.	27-5-53	196

Not to be folded or roughly handled

ELECTIONS - NEW CONSTITUTION FIRST GENERAL ELECTIONS, 1951-52 STATE LEGISLATIVE ASSEMBLY - EAST GODAVARI DISTRICT - ANAPARTHI, RAMACHANDRAPURAM AND KAKINADA ASSEMBLY CONSTITUENCIES - RETURN OF ELECTION EXPENSES PAPERS RECORDED.

ELECTIONS - NOMINATIONS - ACCEPTANCE OF NOMINATION OF A CANDIDATE WHO INCURRED DISQUALIFICATION BUT WHOSE DISQUALIFICATION HAS NOT COME INTO FORCE - DISCUSSION - PAPERS RECORDED.

ELECTIONS - New CONSTITUTION - FILING OF RETURNS OF ELECTION EXPENSES BY CANDIDATES - TIME LIMIT - AMENDMENT TO R.P.ACT, 1951 AND RULES, 1952 - SUGGESTIONS - PAPERS RECORDED.

Strictly Confidential.

Roc.A.913/52 dated 16-5-52.

Office of the Returning Officer,
Kakinada Assembly Constituency,
Kakinada.

From
Sri M.Rangarao, B.A.,
Revenue Divisional Officer and
Returning Officer, Kakinada
Assembly Constituency,
Kakinada.

To
The Additional Secretary to the
Government,
Public Elections Department,
Fort St.George, Madras.

Sir,

Sub: Elections - New Constitution - Madras Legislative Assembly - Kakinada and two other constituencies - certain candidates - failure to lodge return of election expenses - disqualification incurred - notification of Election Commission - Publication.

Ref: i. My Roc.A.913/52 dated 12-5-52.
ii. Election Commission M.D.A.52 dated 9-5-52.
iii. Government Office Memorandum No.2866/52-1 Public (Election) department dated 12-5-52.

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The final scrutiny of nominations for the bye-election to the Kakinada Assembly Constituency was done on 9-5-52 and the final list of valid nominations was published and also submitted to the Government with my reference cited above on 12-5-52. Among the four contesting candidates for the election, Sri Moka Meerayya is one. On 13-5-52 I received Ref:No.M.D.A./52 (66) dated 9-5-52 from the Election Commission, India with its notification that Sri Koka Meerayya had incurred the disqualification under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII)of 1951) as he had failed to lodge the return of election expenses. The Government of Madras have been pleased to order in their memorandum cited above the publication of the said notification in an extra ordinary issue of the Fort St.George, Gazette. The Government Memorandum was received by me on 16-5-52. I solicit instructions whether Sri Moka Meerayya can contest the elections in xx view of the notification of the Election Commission mentioned above.

Sd/
(M.Rangarao)
Returning Officer.

Copy submitted to the Collector, East Godavari, Kakinada for favour of information.

p.t.o.

Elections Urgent. Public (Elections V) Dept.

Letter Ref.No.2769/52-5 dated 22-5-52.

To

The Secretary,

Election Commission, India,

'P' Block, Raisina Road, New Delhi-1.

Sir,

Elections - Kakinada Assembly Constituency - Bye-Election - Disqualification of a validly nominated candidate.

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Ref: This Government's Express Telegram No.2769/52-1 Public (Elections) dated 20-5-52.

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I am directed to invite attention to this Government's telegram cited and to say that the R.O. of the Ramachandrapuram Assembly Constituency has since reported that Sri Moka Meerayya has not yet submitted his representation under rule 114(6) of the R.P.(C.E. & E.P) Rules, 1951. As the disqualifications were notified in the State Gazette Extraordinary dated 13-5-1952 he has time till 28-5-1952 to submit his representation under the above rule.

Before his disqualifications were notified Sri Moka Meerayya had filed his nomination for the bye-election to the Kakinada Assembly Constituency (reserved seat). The scrutiny of nominations took place on 9-5-1952. Sri Moka Meerayya's nomination was found valid and his name was included in the list of valid nominations which was published on 12-5-52. The disqualification notified by the Election Commission under section 7(c) in respect of this candidate came into effect under section 8(1)(b) on 14-5-1952. Unless the period under the latter section could be validly extended by the E.C. subsequently. The question is whether this disqualification will have the effect of over-riding the prior decision of the R.O. finding his nomination valid, and if so, whether his name

p.t.o.

should now be removed from the list of valid nominations. One view is that, as on the date of scrutiny he was not disqualified, and as he has still time to move the Election Commission for the removal of the disqualifications, he should be treated as a contesting candidate for the purpose of the bye-election in the Kakinada Assembly Constituency sending the Election Commission's decision under rule 114(7) and the notification under rule 115 in respect of this person..

I am to request the Commission to be so good as to communicate its views in the matter very urgently, as the poll for the bye-election in the Kakinada Assembly Constituency will take place on 14-6-1952.

Yours faithfully,

Sd/

22-5-52.

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Elections Immediate. (Confidential)

Public (Elections-V) Department.

Memorandum No.2769/52-7, dated 24-5-52.

Sub: Bye-election - Kakinada Assembly Constituency - Disqualification of a validly nominated candidate.

Ref: 1.From the Revenue Divisional Officer, Kakinada, letter No.913/52 dated 16-5-52.
2.From the Collector of East Godavari, No.A.12/8783/52 dated 20-5-52.

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A copy of the Government's letter No.2769/52-5, Public (Elections) dated 22-5-52 addressed to the Secretary, Election Commission India, is communicated to the Revenue Divisional Officer, Kakinada and the Collector of East Godavari for information. Pending the reply from the Election Commission all arrangements for the bye-election should be made on the basis that Sri Moka Meeraiah is one of the contesting candidates.

2. The Collector is informed that Moka Meeraiah was disqualified, as a candidate for election from the Ramachandrapuram Assembly constituency but not from the Kakinada Assembly constituency and the dates given in para 2 of his letter second cited are not therefore correct. The correct dates are specified in the Government's

letter cited.

Sd/
24-5-52.

To

The Revenue Divisional Officer, Kakinada (para 1 only)
The Collector of East Godavari (paras 1 & 2) only)
(with enclosure to both)
(by express delivery)

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Public (Elections V) Department.

Elections - New Constitution - Madras Legislative Assembly - Kakinada constituency - Bye-election- Disqualification of a validly nominated candidate.

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Ref: From the Revenue Divisional Officer, Kakinada, No.Roc. A.913/52, dated 16-5-1952.

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Please see the letter from the Revenue Divisional Officer, Kakinada(~~Assembly Constituency~~(Returning Officer, Kakinada Assembly Constituency) on p.19 C.F. The last date on which the return of election expenses is required to be filed in respect of the Ramachandrapuram Assembly Constituency in the last general elections was 14-3-1952. Sri Moka Meerayya was nominated as a candidate for election to the Madras Legislative Assembly from the Ramachandrapuram constituency. Under Section 8(1)(b), the disqualification incurred by him under Section 7(c) cannot take effect until the expiration of two months from the date by which the return of election expenses ought to be lodged (i.e.) two months from 14-3-52. On 9-5-1952 when the scrutiny for the bye-election in Kakinada Assembly Constituency took place the disqualification had not come effect. So he can contest the bye-election and in case he gets elected he cannot become a member unless the disqualification is removed by the Election Commission. It seems his name cannot be removed from the list of valid

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nominations and that he should be allowed to contest the election so that if he moves the Election Commission in time for the removal of the disqualification he will be entitled to become a member if he succeeds in the election. The Returning Officer may be told that Sri Moka Meerayya should be treated as a contesting candidate despite the disqualification incurred by him. Legal may be requested to advise.

2. As regards the disqualification under section 143 he stands disqualified from voting, immediately. It is presumed that the Returning Officer would have informed the candidate about the disqualifications incurred by him so that he may move the Election Commission in time under rule 114(6), though it is not legally necessary for the Returning Officer to do so.

Legal may see.

Sd/-
19-5-52.

Additional Secretary,(Legal)

Sri Moka Meerayya stood disqualified for election to the State Assembly on 14-5-1952 unless, by that time, the Election Commission had removed the disqualification under section 7(c) or extended the time for the operation of section 8(1)(b). The file ~~XXXX~~ below will shows that we have received no communication from the Election Commission regarding Sri Moka Meerayya after the notification at p.7 c.f. Sri Moka Meerayya was not disqualified at the time of the final list of valid nominations was prepared by the Returning Officer on the ~~12~~ 12th May, 1952. If his disqualification has not been removed by the Election Commission as mentioned above, that disqualification would, I think, over-ride the earlier decision of the Returning Officer that his nomination was valid. If the disqualification is not removed before the date of the poll, I do not think his election would serve any useful purpose even from his own point of view. Another curious feature in this case is that the Election Commission's notification under rule 114(5) having been published in the official gazette only on the 13th May 1952, Sri Moka Meerayya

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has 15 days time, reckoned from that date, for sending his representation to the Election Commission under rule 114(6). It is, therefore, certain that, if he sends a representation within this period, the Election Commission will extend the time under section 8(1)(b). We may, therefore, telegraph to the Returning Officer, Revenue Divisional Officer of Kakinada for the Ramachandrapuram Assembly Constituency, and to the Election Commission to find out what the position now is, and whether Sri Moka Meerayya has filed his representation under rule 114(6), before giving a reply to the Returning Officer. Unless and until we know the dicision of the Election Commission regarding the removal of Sri Moka Meerayya's disqualification, the Returning Officer should, I think make his arrangements on the basis that Sri Moka Meerayya can contest the election.

Sd/
20-5-52.
Addl.Secretary,
Public.

Issue atonce the telegrams below and then send the case to Legal Secretary for remarks and advice.

Sd/
20-5-52.

Legal Secretary /a.1. of the telegrams)

Legal (Opinions-B) Department.

It is desirable to explain to the Election Commission specifically that the disqualification of the candidate took effect only on 14-5-1952, whereas the nominations at the bye-election were scrutinized by the Returning Officer on 9-5-1952. Another telegram may therefore go to the Election Commission in continuation of the one already sent to it.

S.Gopalakrishnan 21-5-52.
K.V.Rajagopalan. "

Public (Elections).

Public (ElectionsaV) Department.

Please see the Legal Department note above. The Returning Officer,(R.D.O., Kakinada) has since reported that Sri Moka Meerayya has not yet sent his representation under rule 114(6).

He has time to do so till 28-5-52. Please see the further telegram sent to the R.O. at p.25 C.F. and his reply at p.27 c.f.

There are two disqualifications involved, viz. (1) under section 143 and (2) under section 7(c).

Item (1) above: The Election Commission's notification is dated 9-5-1952 but it was published in the Fort St.George Gazette Extraordinary dated 13-5-52. It seems the disqualifications under section 143 comes into effect from the date of the Commission's notification, viz.9-5-1952 unless it is removed by the Election Commission under section 144. But the real point is that until action is taken under rule 21 of the R.P.(P.E.R.) Rules, 1950, the candidate's name will be continued in the electoral roll and on 9-5-52 when the scrutiny took place, as the candidate's name had not yet been struck off from the electoral roll of the constituency concerned, he continues to be a voter and is therefore qualified under section 5(c) of the R.P. Act, 1951. Legal may advise whether this view is correct.

Not necessary. See P.E.(I)'s note below Sd/- 22-5-52.

Item (2) on p.3 above: Perhaps the circumstances may be explained to the Election Commission and its advice sought. As the candidate has not yet submitted his representation a draft letter instead of a telegram is submitted, with reference to Legal Department note on p.3 ante.

Sd/
22-5-52.

Public (Elections I)

A above : It has been agreed in their Department file, seen by Legal, that if the name of a person disqualified under Section 143 is not struck off the electoral roll, he cannot be refused permission to vote at an election which takes place during the disqualification period, that is, he continues to be a voter.

Sd/
22-5-52.
A.I./ Addl.Secretary.

Draft to E.I. approved as revised. Issue atonce.

Sd/
22-5-52.

(Issued as Letter No.2769/52-5 dated 22-5-52).

Please see the telegram from the Revenue Divisional Officer, Kakinada on p.31 c.f. and the Collectors letter on p.33 s.f. A copy of the letter to the Election Commission on pp.29-30 c.f. may be sent to the Collector of East Godavari and Revenue Divisional Officer, Kakinada. The issue will have to be settled after the Election Commission's reply is received.

A draft memo is submitted.

X at p.31 c.f Note on this report on receipt.
Sd/
23-5-52.

II. Yes. Say that pending the E.C's reply, the arrangements on the election must proceed on the basis that ~~xkx~~ sri Moka Meerayya is one of the contesting candidates
Sd/
23.5.52.

2. With reference to the oral orders of Additional Secretary, the original of G.O.Ms.No.1566-67 Public (Elections) dated 20-9-1939 is put up at (D). The discussions in that G.O. relate mainly to the question whether extension of time for the operation of the disqualification granted after the disqualification came into effect, can have retrospective effect and it was decided in the negative.

Sd/

Sd/
23.5.52.
Addl.Secretary.

II

Para 2 of the Collector's letter

The Collector has got his dates wrong. Sri Moka Meerayya was disqualified as a candidate for the Ramachandrapuram Assembly Constituency election (p.7 c.f.) Point this out. The correct dates are given at pp.29-30 c.f.. say so. Revise the draft and issue atonce.

The Office has not commented
Sd/
23-5-52.

Draft to A.I and issue atonce.

Sd/
23-5-52.

I
Send atonce the Express telegram below.

Sd/. 23-5-52.

III. The Secretary of State's ruling in that case was accepted by our Legal Department and it seems sound. This issue arises in the present case also. The

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provision in Section 8(1)(b) of R.P. Act, 1951 is the same as under the Government of India Act, except that the period is now 2 months and not one month. The point is that rules 114(6) and 115 cannot extend the time beyond that permissible under the Act. The scheme of the rules seems to have lost sight of this aspect: the time table in rules 114 and 115 may not fit in with section 8(1)(b). ~~The~~ We pointed this out, I remember, with reference to the draft rules. Legal Secretary may see for remarks and advice.

Sd/
23-5.52.

II on p.5 ante: A revised draft is Submitted. After Issue, the file may be sent to Legal for remarks and advice with reference to III above.

Sd/
24.5.52.

Sd/
24-5-52.

Issued.

Legal (a.i.)

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Public (Elections V) Department.

Pages (1-5 ante) 39-42 c.f.

No action is called for.

Page (& 7 ante) 43 c.f.

The Returning Officer has already been told that he should proceed on the basis that Sri Moka Meerayya is one of the contesting candidates pending the decision of the Election Commission. A telegram was sent to him on 23.5.52. No further action seems necessary.

Pages (9-11 ante) 45-47 c.f.

The Election Commission's orders will have to be awaited.

Letter on(p.13 ante) 51 c.f.: With reference to para 1 of the letter, it is submitted that the Returning Officer has already been told that pending the final decision of the Election Commis: Sri Moka Meerayya should be treated as a contesting candidate.

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2. With reference to para 2 on p.13 ante(51 c.f.) it is submitted that the Returning Officer has already been advised accordingly and Sri Moka Meerayya has since submitted his representation under rule 114(6) a copy of which is on p.11 ante(49 c.f.)

Perhaps a copy of para 1 on p.13 ante(51 c.f.) may be communicated to the Returning Officer for information. A draft memo. is submitted for approval.

The main file has been sent to Legal with this Department U.O.No.2769/52-8, dated 24-5-52. After issue of the memo. this may also be sent to Legal in continuation.

Sd/
27-5-52.

Legal (Opinions) Department.

The Election Commission has, in its reply at p 51 c.f., agreed with the view expressed in this Government's letter at pp 29-30 c.f. The candidate has also made representations to the Election Commission under rule 114(6) for the removal of the disqualification. The final dicision of the Election/ A Commission may be awaited.

K.G.Viswanathan, 28-5-52.
K.V.Rajagopalan "

Public (Elections).

Submitted to Deputy Secretary for perusal with reference to A above the Election Commission, may be reminded on the 2nd or 3rd June 1952.

Sd/
28-5-52

With reference to 'B' above a draft telegram is submitted for approval.

Sd/
3-6-52.

The Election Commission has since removed the disqualifications incurred under sections 7(c) and 143 of the R.P.Act, 1951, by Sri Moka Meerayya. A copy of the Commission's notification was published in Fort St.George Gazette, Part II Extraordinary, dated 7-6-52 and was also communicated to the

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Returning Officer concerned. There is now no bar for Sri Meeraiah to contest the election.

Legal may see for remarks and advice with reference to III on p.6 ante.

Sd/ 11-6-52.

Sd/ 12-6-52. D.S./Legal.

Legal (Opinions) Department.

Section 8(1)(b) of the Representation of the People Act, 1951, is in pari materia with the proviso to section 69(1)(f) of the Government of India Act, 1935. Therefore the principle of the ruling of the Secretary of State referred to at page 9 n.f. of G.O.No.1566-67 dated 20th September 1939 at flag (D) applies to the interpretation of section 8(1)(b) of the Representation of the People Act also. The disqualification imposed by section 7(c) would take effect at once but for the saving enacted in section 8(1)(b) of the Representation of the People Act, 1951. Therefore the moment the benefit of the saving contained in section 8(1)(b) becomes unavilable to the person concerned, he will incur the disqualification imposed by section 7(c). If the Election Commission does not extend the period of two months prescribed by section 8(1)(b), the disqualification will fasten on the person as soon as the period of two months expires. This result can be postponed only by the Election Commission extending the period before the expiry of t two months mentioned in section 8(1)(b). The enlargement of time by the Election Commission does not and cannot have the effect of cancelling the disqualification which has already been incurred by a person. It can operate only to postpone the incurring of the disqualification and not to nullify a disqualification which has already been incurred. If the Election Commission fails to extend the period before the expiry of two months specified in section 8(1)(b), the person concerned would have incurred the disqualification and the subsequent enlargement of time by the Election Commission cannot have the effect of removing that disqualification. In other words, the disqualification already

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incurred will continue to attach to the person, and no question of postponing it can therefore arise. It follows that the extension of time which the Election Commission is entitled to grant under section 8(1)(b) should be granted before the disqualification is incurred, and it would not be possible to postpone the incurring of the disqualification by extending time after the disqualification has attached to the person concerned.

2. Rules 114 and 115 have to be construed in the light of the above and so as to be consistent with section 8(1)(b). The Time-table laid down in the rules cannot compel us to put a different construction on the section. To the extent to which the time-table may be inconsistent with the terms of the section, it is the time-table which should be altered, so that it may be clear beyond doubt that section 8(1)(b) bears the construction put upon it in paragraph 1 of the above note.

Sd/ K.V.GOPALAKRISHNAN,
27-6-52.

Sd/ K.V.Rajagopalan,
27-6-52.

Public (Elections)

Public (Elections) Department.

With reference to Additional Secretary's note at III on page 6 ante, please see the Legal Department's note on pages 9 to 11 ante.

They agree that an order of extension of time under section 8(1)(b), to be effective, should be passed before the expiry of the two months period prescribed in that section. The point is of much practical importance if the person disqualified, is a member of the Legislature. In his case, unless every order of extension is granted within the prescribed time or extended time, or unless the order of removal of disqualification under section 7(c) is passed before the expiry of the time or extended time allowed under section 8(1)(b), he will lose his seat. A subsequent order of removal of disqualification will not restore his membership of the Legislature. It may be mentioned in this connection that there is no member of the Legislature in this State, who stands disqualified now.

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2. The time-table set out in rule 114 does not find in with the provisions of section 8(1)(b). The following is the time-table set out under the above rule regarding the incurring or removal of disqualifications for all the candidates, except those who are absent from India:-

1. Time for submission of the report of the Returning officer to the Election Commission under rule 114(1).	Within 10 days from the date on which the return of election expenses ought to have been lodged.
2. Time for publication of the Election Commission's order regarding disqualifications in the official Gazette, under rule 114(5).	Not later than 40 days from the date on which the return of electio expenses ought to have been lodged. (It may not be practicable for the E.C. he do no for all the case coming u p in India. Sd/ 17-7-
3. Time for representation under rule 114(6) to the Election Commission for the removal of the disqualifications.	Within 15 days from the date of publication of the notification under rule 114(5) regarding disqualifications, in the official gazette.

Under section 8(1)(b), a disqualification under section 7(c) will normally become effective after the expiry of 2 months from the date on which the return ought to have been lodged. According to the time-table in rule 114(5) and (6) it is possible that a representation can be made to the Election Commission under rule 114(6) on the 55th day from the date on which the return of election expenses ought to have been lodged. In such a case, the Election Commission's order should be passed within 5 days' time as otherwise the disqualification would become effective. A subsequent order of removal of the disqualification by the Election Commission after the 60 days period will be of no avail, especially, if the disqualified person were to be a member of the Legislature, he would have lost his seat. The inconsistency of the

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provisions in rule 114(6) with those in section 8(1)(b) is clear in the following case:

The Election Commission has in one case held that even if the Commission's decision is published under rule 114(5) after the expiry of the limit of 40 days, it will not vitiate its decision under rule 114(4) but that the period of 15 days under rule 114(6) shall be counted from the date of publication of notification in Gazette. It will therefore be perfectly lawful for the Election Commission to pass a late order as it did in Moka Meerayya's case, where the election Commission's notification regarding disqualifications was published after 59 days from the date on which the return ought to have been lodged. So in a case, where the notification of disqualification is published in the offcial gazette after 60 days from the date on which the return ought to have been lodged,, if the disqualified person were to be member of the Legislature, the right allowed under rule 114(6) to represent to the Election Commission within 15 days, for the removal of the disqualification cannot be availed of, as under section 8(1)(b), the disqualification once notified would immediately become effective as 60 days period has already lapsed and the member would have lost his seat. In such a case the right to represent under rule 114(6) is no right at all. The point is, how in such a case, the provisions in rule 114(6) can be reconciled with those in section 8(1)(b)? To remove this apparent inconsistency, two courses are submitted for consideration.

(i) The time limit specified in section 8(1)(b) may be raised to three months and it may be laid down that the notifications regarding disqualifications should be published within 40 days without fail, so that the Election Commission can have sufficient time to consider the representations made to it under rule 114(6) and issue its orders under section 8(1)(b) or 7(c), before the expiry of the 3 months period; or

(ii) Rule 114(5) may be amended so as to prescribe that the list of disqualified persons should be got published within 21 days from the date on which return ought to have been lodged so that there is sufficient time for the Commission to consider the representation under rule 114(6), before the expiry of the 2 months period allowed under section 8(1)(b).

It seems to be better to amend section 8 (1)(b) replacing two months by those months.

We may urge for amendment of section 8(1)(b) rule 114(5) as specified above. For orders.

Legal may see again before circulation.

Sd/

10-7-52.

Addl.Secretary (Legal)

Rule 114(1): There is no need to prescribe any time limit in this rule. The Returning Officer should take action as indicated in this rule without any avoidable delay after the last date for the lodging of the return of election expenses. The rule may, therefore, merely say "As soon as may be after the expiration of the time" etc.— please see in this connection the wording of rule 114(2) for analogy.

Rule 114(5): It may not be practicable for the Election Commission dealing with cases coming up from all over India to adhere to any particular time limit. Here also, no time limit need be mentioned in the rule, and this rule also may start with the words "As soon as may be after the decision referred to in but rule (4) the Election Commission shall came to be published etc.

Rule 114(6): This time limit is reasonable and may, and should, stand.

I agree that, as a considerable amount of time is required for the Election Commission to deal with cases coming up from all over India, and having regard to the large number of disqualified persons who will take action only at the last moment to save their seats, it is necessary and reasonable to allow three months' time under section (8 (1)(b) the Election Commission's

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powers to pass an order within that period, extending this 3months period of grace being retained to provide for exceptional cases.

Sd/
17-7-52.

Addl.Secretary,
Public.

Legal.

Legal (Opinion) Department.

Under the scheme of rule 114(5) and (6), barely 5 days are left for the Election Commission to pass orders removing the disqualification or extending the period of two months prescribed under section 8(1)(b). This undoubtedly is a very short time for the Election Commission which has to deal with many cases coming from all over India. The failure on the part of the Election Commission to pass orders within this brief period of 5 days would entail the serious consequence of the person concerned becoming disqualified under section 7(c). The shortening of the period mentioned in rule 114(5) or 114(6) would be unreasonable, for the period prescribed therein can by no means be said to be long or liberal. Further, the shortening of the period will also lead to practical difficulties; the Election Commission which has to deal with a large number of cases would find it difficult to publish the list containing the names of the candidates and their election agents within a shorter time than that prescribed by rule 114(5). It would bear harshly on the concerned candidate or agent if he is asked to submit his representation to the Election Commission within a shorter period than that prescribed by rule 114(6), and he is likely to complain that the shortening of the period has rendered his right of representation practically illusory. In the circumstances the best course seems to be the one

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suggested by the Additional Secretary, Public, namely, to amend section 8(1)(b) by substituting the expression "three months" in the place of "two months" now occurring in that section. If this course is adopted, it will not be necessary to amend rule 114 in any manner.

Sd/. K.V.Gopalakrishnan
18-7-52.

Public Elections Department.

PUBLIC (ELECTIONS-V) DEPARTMENT.

Under Sec. 8(1)(b) of the R.P.Act.1951, a disqualification incurred by a person under Sec.7(c) of that Act shall not take effect until the expiration of two months from the date on which the return of election expenses ought to have been lodged or of such longer period as the Election Commission may in any particular case allow. According to the time-table set out in rule 114(5) of the R.P.(C.E.and E.P) Rules, 1951, as it stood before the recent amendme-nt the notification disqualifying a person under Sec.7(c) should be published in the Official Gazette within 40 days from the date on which the return of election expenses ought to be lodged. In cases where the Commission's notification is published within the 40 days period, there is time for the person disqualified to make a representation under rule 114(6) upto 15 days from the date of publication of the notification under rule 114(5) in the Official Gazette. In such cases a representation can be received by the Election Commission up to 55 days from the date on which the return ought to have been lodged. There will, therefore, be hardly 5 days' time left for the Election Commissi on to consider such cases and to pass orders extending the period for the coming into effect of the disqualification or its removal.

The Election Commission, has however held in another case that a notification under rule 114(5) published in the Official Gazette even after the period of 40 days specified in that rule will not affect the validity of its decision under rule 114(4) In cases, where the Election Commission issues a notification late say after 50 days, taking into account the period allowed under rule

114(6), it is likely that its order, under Sec.7(c) or 8(1)(b) removing or extending the date for the commencement of the disqualification, may be passed after two months from the date on which the return ought to have been lodged. Following the ruling of the Secretary of State at p.9 n.f. of G.O. Ms.No.1566-67, dated 20-9-1939, it is considered that unless the order of the Election Commission is passed within the two months' period allowed under Sec.8(1)(b), the disqualification under Sec.7(c) will automatically come into effect on the expiry of that period, and a subsequent order of the Election Commission either extending the date for the commencement of the disqualification or removing the disqualification, will be of no avail. Please see in this connection the Additional Secretary's note at p.6 ante and the Legal Department note at pp.9-11 ante.

This would cause great hardship if the disqualified person were to be a member of a Legislature. As soon as the two months period allowed under Sec.8(1)(b) expires, he would automatically lose his seat and a subsequent order of the Election Commission removing the disqualification or extending the period will be of no avail, and his membership cannot be restored. It is, therefore, clear that the time-table set out in rule 114 does not fit in with Sec.8(1)(b) and the period of two months allowed under sec.8(1)(b) is not adequate.

The following amendments are therefore suggested:-

Rule 114(1): There is no need to prescribe any time-limit in this rule. The Returning Officer should take action as indicated in this rule without any avoidable delay after the last date for the lodging of the return of election expenses. The rule may, therefore, merely say "As soon as may be after the expiration of the time", etc. - please see in this connection, the wording of rule 114(2) for analogy.

Rule 114(5): It was originally noted that no time limit might be prescribed in this rule too. The Government of India have since amended this rule accordingly-vide G.O.Ms.No.2064, Public (Election), dated 19-8-1952.

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Rule 114(6): The time limitx specified in this rule is reasonable and may stand.

Sec.8(1)(b): A considerable amount of time is required for the Election Commission to deal with cases coming up from all over India and having regard to the large number of disqualified persons who will take action only at the last moment to save their seats, it is necessary and reasonable to allow three months' time under Sec.8(1)(b), (as against the 2 months now allowed) the Election Commission's powers to pass an order within that period extending this 3 months' period of grace being retained to provide for exceptional cases. legal agree with this out suggest that no amendment to rule 114 is necessary. Consequential amendment to rule 115 of the R.P.(C.E. and E.P.) Rules, 1951, should also be made.

The above amendments I and II are desirable and necessary and may be put to the Government of India, but the actual drafting of the amendments may be left to them.

The file may be circulated to M.(Fin), C.M., and G. for approval.

Sd/
13-9-52.

Sd/
Addl.Secy. 15-9-52.

M (Fin) Sd/
17-9-52.

M (Law) Sd/
18-9-52.

C.M. Sd/
20-9-52.

Sd/ Sri PRAKASA
23-9-1952.

Put up draft para.
Sd/
25-9-52.

A draft para for inclusion in the letter to the Government of India, is submitted for approval.

Sd/
1-10-52.

Appd. As revised.
Sd/ 1-10-52.
Addl. Secretary.

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Public (Elections III) Dept.

The papers in this file relate to the filing of the returns of election expenses of the candidates from Anaparthi, Kakinada and Ramachandrapuram Assembly constituencx ies of East Godavari District during the last General Elections. Nine candidates from Kakinada one from Ramachandrapuram and one from Anaparthi were disqualified by the Election Commission. The disqualification of the candidate from Ramachandrapuram Assembly constituency has been removed. The disqualifications of three candidates from Kakinada Assembly constituency have also been removed. The conected notifications have all been published in the Fort St.George Gazette. If the disqualifications of any of the remaining persons is since removed, action may be taken later on receipt of the notifications from the Election Commission. There is no further action in this file. The papers may be recorded as a Government Order for facility of future reference.

It is also seen that the question whether a candidate who has incurred disqualification but whose disqualification has not come into effect can stand for election was discussed in this file. In connection with the case of Sri Moka Meerayya who was disqualified by the Election Commission but who stood for bye-election in the Kakinada Assembly constituency; it was decided that Sri Moka Meerayya can contest election. The question whether any amendments to the existing sections 81(b) of the R.P.Act, 1951 and rules 114(1), 114(5) and 114(6) of the R.P.Rules, 1952 was also discussed and it was decided to recommend to India that these may be amended suitably.

The papers may therefore be indexed in three heads as suggested.

Sd/

22-5-53.

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GOVERNMENT OF MADRAS.

Sub: Elections - New Constitution First General Elections, 1951-52 State Legislative Assembly East Godavari District - Anaparthi, Ramachandrapuram and Kakinada Assembly costituencies - return of election expenses - Papers recorded.

Sub: Elections - Nominations - Acceptance of nomination of a candidate who incurred disqualification but whose disqualification has not come into force - Discussion - Papers recorded.

Sub: Elections - New Constitution - Filing of returns of election expenses by candidates - Time limit - Amendment to R.P.Act, 1951 and Rules, 1952 - Suggestions - Papers recorded.

PUBLIC ELECTIONS III) DEPARTMENT.

G.O.Ms.No.1407 Dated 27-5-53.

Recorded.

Sd/

/True copy/

SUPERINTENDENT,
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Gn/11-5-71.

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